

# REMARKS

Claims 1-31 and 37-42 are pending in the current application. Claims 1, 7, 14, 19, 25, 32 and 37-41 are independent claims. Claims 32-36 have been withdrawn. Claims 42 is added by this Preliminary Amendment, with support for claims 42 present at least within [0028]-[0029] and Table 1 of the Specification.

Reconsideration and issuance of the present application is respectfully requested in view of Applicant's response of 11/05/2008 as well as the presently filed Amendments.

## Response to Examiner's comments in the 12/1/2008 Advisory Action

The Examiner has substantially maintained his position in the 12/1/2008 Advisory Action. However, Applicant believes the Examiner is making conclusions based on hypothetical scenarios not disclosed in the Lindskog reference.

As an initial matter, the Examiner appears to agree with Applicant's position that Lindskog only teaches assigning codes or sub-codes to mobile stations upon request (e.g., "[t]he channel resource handler as taught by Lindskog, allocates code in response to received channel requests", Page 2 of the 12/1/2008 Advisory Action). The Examiner's conclusion that "[i]t would have been obvious to one of ordinary skill in the art that a second request from a subscriber station would be treated as a second channel request ... [and] [d]ependent upon the resources available ... the sub-code assigned could be a derivative of the first code and be assigned to the second channel to the first subscriber station" (e.g., Page 2 of the 12/1/2008 Advisory Action).

Applicant notes that Lindskog does not, in fact, disclose receiving multiple channel requests from mobile stations, which means that this is a hypothetical scenario derived not from the Lindskog reference, but rather from the Examiner, in hindsight. Likewise, the Examiner's assumption that there are available resources for allocation in response to the hypothetical second channel request is yet another hypothetical scenario, as Lindskog does not disclose the assumed hypothetical scenario.

The Examiner cannot rely hypothetical scenarios generated by the Examiner within which a reference may theoretically operate as claimed, but must rather rely upon what is actually disclosed in the cited reference. For example, the Examiner provides no support for why a mobile station in Lindskog would send multiple channel requests?

Likewise, there is no teaching that Lindskog would respond to a second channel request from the same mobile station by "assigning a second sub-code derived from the first code to support a supplemental channel to the second subscriber station". Rather, Lindskog could alternatively assign a sub-code from an otherwise unused code, or could allocate another unused code altogether. In any case, no such embodiment is actually disclosed in Lindskog, so Lindskog is silent on the matter.

In view of the above remarks, Applicant respectfully requests an indication of allowance for the presently pending claims of this application.

### SUMMARY

Claims 1-31 and 37-41 remain rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Publication No. 2006/0120322 ("Lindskog") in view of U.S. Patent No. 6,901,062 ("Scherzer"). Applicant once again traverses this rejection. Applicant expressly maintains the reasons from the prior responses to clearly indicate on the record that Applicant has not conceded any of the previous positions relative to the maintained rejections. For brevity, Applicant expressly incorporates the prior arguments presented in the April 29, 2008 response without a literal rendition of those arguments in this response.

For at least the foregoing reasons and the reasons set forth in Applicant's responses of April 19, 2008 and November 5, 2008, it is respectfully submitted that claims 1-31 and 37-41 are distinguishable over the applied art. The remaining dependent claims are allowable at least by virtue of their dependency on the above-identified independent claims. See MPEP § 2143.01. Moreover, these claims recite additional subject matter, which is not suggested by the documents taken either alone or in combination.

Therefore, it is respectfully submitted that the rejection be withdrawn and that the claims be allowed.

### CONCLUSION

In light of the amendments contained herein, Applicants submit that the application is in condition for allowance, for which early action is requested.

Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

Respectfully submitted,

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